HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.A.No. 525 of 1999
Reserved on: 14.9.2007
Decided on: 21.9.2007

State of Himachal Pradesh .....Appellant.

Versus

Kishori Lal and another .....Respondents.

Coram:
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the appellant: Mr.Ashutosh Burathoki, Additional Advocate General.

For the respondents: Mr.Virender Rathore, Advocate.

V.K. Ahuja, J:

This is an appeal filed by the appellant/State of H.P. against the judgment of acquittal, dated 19.5.1999, passed by the learned Judicial Magistrate Ist Class, Dharamshala, in case under Section 41, 42 of the Indian Forest Act.

Briefly stated the facts of the case are that on 29.12.1993, the police officials were on *nakabandi* and at about 1.30 p.m., they intercepted two trucks bearing Nos.HID-6027 and HID-6127, which came from Palampur side and these were stopped by the police officials and the Dy.S.P. demanded the documents of

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[1] Whether reporters of Local papers may be allowed to see the judgment? Yes.

these trucks in which the owner of the truck was transporting *Tejpatra*. The owner of the truck, namely, Kishori Lal, respondent produced the export permit dated 28.12.1993 valid upto 10.1.1994 for 35 quintals from Lower Chotra to Amritsar and the permit was issued by DFO, Joginder Nagar. The permit was for the export of 35 quintals of *Tejpatra* and the police became suspicious that the quantity of the *Tejpatra* may be more and the trucks were taken to the Flour Mill where these were weighed. The total produce in both the trucks was found to be 60.25 quintals which was excessive by 25.25 quintals since the permit was for export of 35 quintals of *Tejpatra* only. The ruka was sent to the police. The FIR was registered and case was investigated. After investigation, the challan was filed against both the respondents and one Shri Gian Chand (since dead) for offences punishable under Sections 41 and 42 of the Indian Forest Act. The learned Trial Court tried the respondents and Gian Chand (since dead) and the trial resulted in the acquittal of all the three accused persons.

I have heard Shri Ashutosh Burathoki, learned Additional Advocate General for the appellant/State and Shri Virender Rathore, learned counsel for the respondents.

The submissions made by the learned Additional Advocate General were that since the *Tejpatra* was found in excess by 25.25 quintals after deducting the weight of the empty trucks and as such the prosecution had proved its case, but the learned Trial Court disbelieved the prosecution story, which findings can be said to be perverse and as such they are liable to be reversed.

On the other hand, the learned counsel for the respondents had supported the impugned judgment for the reasons given therein supplementing it by the submission that the empty truck was never weighed and the total

weight of the trucks including that of the *Tejpatra* was taken and by deducting the weight of empty trucks given in the RC, the police had concluded that the *Tejpatra* was found in excess which procedure adopted by the police cannot be said to be correct. It was submitted that the truck was having stepney, tools and other implements and since the weight of the empty truck was never taken, it cannot be said that what was left after deduction of the weight of the empty trucks was only the *Tejpatra* which weighed 60.25 quintals. Thus, it was submitted that since one view has been taken by the learned Trial Court which cannot be said to be perverse, the findings of acquittal recorded by the learned Trial Court do not call for an interference by this Court.

To substantiate his above submissions, the learned counsel for the respondents had relied upon two decisions. The decision in **Samghaji Hariba Patil v. State of Karnataka, AIR 2007 Supreme Court 28,** shows that it was observed by the Apex Court that in case the view of the trial court acquitting appellant is based on deposition of the prosecution witnesses which cannot be termed as perverse the same cannot be interfered with.

The decision in **State of H.P. v. Bhag Chand, 1990 (1) S.L.J. 481,** of this court was relied in which it was observed by this Court that there was no cogent and convincing evidence as to the exact measurement of the timber since the prosecution evidence showed that some of the logs were measured with tape and some other were measured by approximation. Therefore, it was held that no reliance can be placed on the measurement part of the case and it cannot be concluded that the total number of scants were more than for which the permit was issued in favour of the accused. The said case was also under the Forest Act read with Sections 468 and 420 of the IPC.

Coming to the facts of the present case, it is clear from a perusal of the evidence that the case mainly rests upon the statement of PW-1 Sohan Singh, the owner of the Flour Mill, where the enforcement people came for weighing the trucks. PW-1 Sohan Singh has stated that he had weighed the trucks, issued slips Ext.PW-1/A and Ext.PW-1/B, and recovery memo Ext.PW-1/C bears his signatures. He stated that the trucks were taken in possession by the police officials alongwith *Tejpatra* vide recovery memo Ext.PW-1/D. He has not stated about the total weight of both the trucks including the *Tejpatra* loaded therein, but has relied upon his slips Ext.PW-1/A and Ext.PW-1/B issued by him. In cross examination, he has very clearly stated that the weight of the loaded trucks was taken and the trucks were not weighed again after unloading.

PW-2 Amol Singh, Constable, has stated that the trucks were taken to the Flour Mill and were weighed and total weight found was 60.25 quintals of *Tejpatra*. He stated that in one truck, the *Tejpatra* found was 29.15 quintals while in another, it was found to be 31.10 quintals. He has stated that the documents of the truck were taken in possession. He clearly stated that the *Tejpatra* was unloaded at Parour with the held of labourers and he is not aware about the weight of the empty trucks. He clearly stated that the *Tejpatra* was not weighed separately in his presence.

PW-3 Chet Ram, Forest Official, had proved the permit issued.

PW-5 Trilochan Singh, Dy.S.P., was the incharge of the raiding party at that time. He has also stated about the manner in which the trucks were weighed. He clearly stated that the trucks or *Tejpatra* were not got separately weighed.

The other witness PW-7 Mansa Ram was also in the raiding party, who also supported the deposition made by PW-5.

It is clear from the above discussion of the evidence led by the prosecution that the total weight of both the trucks was taken including *Tejpatra* loaded therein and thereafter the Investigating Officer deducted the weight given in the RCs of both the trucks and concluded that the quantity of *Tejpatra* was 60.25 quintals and as such it was excess by 25.25 quintals. It is, therefore, clear that by process of deduction of the weight of the truck in RC, the police had concluded that whatever was left out of the total weight of the trucks was *Tejpatra*. In my opinion, it cannot be said that whatever was left in the truck after deduction of the weight of the empty trucks was *Tejpatra* since something else may have been hidden there under the *Tejpatra*. Until and unless the *Tejpatra* was separately weighed after unloading it, it cannot be concluded that the quantity of *Tejpatra* only was in excess by 25.25 quintals. I agree that weighing so much quantity of *Tejpatra* would have been a difficult task, but once the police had unloaded the *Tejpatra* and thereafter concluded that the *Tejpatra* was found in excess, the *Tejpatra* as well as truck could have been again separately weighed, which would have given a definite opinion as to the quantity of *Tejpatra* found in the trucks. It was a criminal offence which was required to be proved and until and unless there was specific findings as to what found in excess was only *Tejpatra* then what was permitted as per the permit, it cannot be concluded that whatever quantity was excess in weight was only of *Tejpatra* so as to hold the accused persons liable for the offence. One view has been taken by the learned Trial Court on the basis of the evidence, which view is

possible and cannot be termed as perverse calling for an interference by this Court at this stage.

In view of the above discussion, I accordingly hold that no case is made out for interference in the judgment of acquittal passed by the learned Trial Court and those findings are upheld. The appeal filed by the State of Himachal Pradesh is dismissed accordingly. The bail bonds furnished by the respondents shall stand discharged.

(V.K. Ahuja),
Judge.

September 21, 2007
(TILAK)